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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Forty-sixth session

SUMMARY RECORD OF THE 27TH MEETING

Held at the Palais des Nations, Geneva,
on Friday, 19 August 1994, at 3 p.m.

Chairman: Mrs. ATTAH
later: Ms. CHAVEZ

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GE.94-14048 (E)

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The meeting was called to order at 3.10 p.m.

THE REALIZATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (agenda item 8) (continued) (E/CN.4/Sub.2/1994/18 and Corr.1. 19-21 and 46; E/CN.4/Sub.2/1994/NGO/2, 7, 18 and 19)

1. Mr. AL-KHASAWNEH, Special Rapporteur on the human rights dimensions of population transfer introducing his progress report (E/CN.4/Sub.2/1994/18 and Corr.1), said that population transfer was a generic term encompassing situations such as the removal of a population to build a dam at one end of the spectrum and ethnic cleansing at the other. Those situations were quite different from each other and some distinction was needed. To determine the consequences that flowed or should flow from population transfer, it was necessary to ascertain what obligations had been breached, what actions required compensation and whether actions were prohibited or even criminal.

2. The report was divided into seven chapters. The normative structure of human rights and population transfer was described in chapter I, which put forward a number of propositions: that the essence of human rights in international law formulated general standards governing the conduct of States towards their own populations and other persons within their territory; that those standards applied to the protection of persons or populations against or during population transfer; that population transfer was a matter of international concern and breaches might constitute an international wrong entailing State responsibility; that collective interests were involved, but the institutional arrangements on the international level were still at a rudimentary stage of development; and that human rights standards which were part of customary international law might be applied to population transfer. Thus, standards prohibiting genocide, slavery and torture or other cruel, inhuman or degrading treatment were particularly relevant to determining the prohibition of population transfer with regard to both purpose and method. Many rights relevant to population transfer were derogable rights, but they were exceptions and should be construed narrowly.

3. Chapter II studied those standards in greater detail. It stated the general proposition that consent was the basis for the removal or relocation of populations. Compensation must be made, even when consent had been obtained, and was not necessarily restricted to pecuniary compensation.

4. Chapter III examined population transfer and derogation. Relocation should be proportionate to the danger, degree and duration of a state of emergency and must not last beyond that duration. Displaced persons had the right to return to their places of origin once the emergency ended and relocation and return should not be discriminatory.

5. Chapter IV referred briefly to population transfer and economic, social and cultural rights, which was a difficult topic and would be dealt with in greater detail in his final report.

6. Chapter V discussed population transfer and the law of armed conflict. In both international and internal conflicts, population transfer was prohibited except in extremely limited circumstances relating essentially to

the safety of the civilian population. Military necessity, which was often invoked to justify such transfers, should be construed narrowly and was in any case regulated by the concept of proportionality.

7. State responsibility and population transfer were discussed at some length in chapter VI, which contained an account of the work of the International Law Commission in that regard, largely because of a gap in international law, by which rules of State responsibility applied in a classic inter-State system whereas individual rights were not so detailed. The problem with the topic as it had been developed by the International Law Commission was that it also encompassed so many other breaches, such as the opening of a diplomatic bag, for example. It had been argued that human rights violations needed a different regime, as they involved people and not material objects.

8. The concept of force was still not defined with sufficient precision in the report. For example, when an embargo or economic pressure on a State caused the population to flee, force was not necessarily the issue. Instead, the criterion was lack of consent. A third type of population transfer related to development projects, in which there was no fault, but injury none the less ensued to the population transferred. As a matter of equity, as innocent victims, those affected might be entitled to some form of compensation.

9. Mrs. PALLEY said that reading the report was the most intellectually stimulating experience of all her years on the Sub-Commission. It contained some novel ideas regarding State responsibility and filled an important gap in human rights law.

PROTECTION OF MINORITIES (agenda item 18) (continued)
(E/CN.4/Sub.2/1994/L.5 and L.6)

Draft resolution on strengthening the prevention and punishment of the crime of genocide (E/CN.4/Sub.2/1994/L.5)

10. Ms. WARZAZI said that, in the sixth preambular paragraph, everything from the word "study" to the word "genocide" should be deleted and replaced by the words "second report". The symbol should also be revised to read "E/CN.4/Sub.2/1985/6".

11. Mr. EL-HAJJE said, with reference to the same preambular paragraph, that the word of the International Law Commission concerning the statute for an international criminal court had been completed and that the reference thereto could perhaps be deleted.

12. Ms. DAES proposed that, in paragraph 1, the word "Requests" should be replaced by the words "Recommends to the Commission on Human Rights that it request", as the Sub-Commission did not have the right to address the General Assembly directly.

13. Mr. YIMER said, with reference to the comment made by Mr. El-Hajje, that the word of the International Law Commission had indeed been completed but the statute in question had to be submitted to the Sixth Committee of the General Assembly later in 1994 and the paragraph should thus be left as it stood.

14. Mr. CHERNICHENKO said that he would prefer that the draft resolution were adopted "without a vote" rather than "by consensus". Paragraph 4, which proposed extending the enforcement of the Convention on the Prevention and Punishment of the Crime of Genocide to political genocide, was premature. Rather, the Sub-Commission should consider how the Convention could be made more effective. The concept of genocide was a very vague one and there was a tendency among journalists, especially Russian journalists, to dub any mass murders genocide. Killings were abominable, but the concept of genocide could not cover all forms of assassination. However, he would not object to the Sub-Commission adopting the draft resolution as it stood.

15. Ms. FERRIOL ECHEVARRIA said the Spanish version of the text was not in line with the other language versions, the subheading being missing. The sponsors should try to coordinate the various language versions, as the text was difficult to approve as it stood. As for the reservation entered by Mr. Chernichenko, she did not think that the Sub-Commission was competent to interpret existing international conventions and to extend the genocide convention to include political genocide. The sponsors should focus the draft text of the resolution on its main purpose, namely, establishing a mechanism to control compliance with the genocide convention.

16. The CHAIRMAN said the final Spanish version would be aligned with the original French text.

17. Ms. WARZAZI said the sponsors were prepared to revise paragraph 4 by ending it with the word "crime" and deleting the words "and also by extending its enforcement, which has until now been limited to ethical, racial or religious genocide, to political genocide".

18. Mr. FAN Guoxiang said that, while not formally opposed to the adoption of the draft resolution, he, too, had reservations about the inclusion in paragraph 4 of a specific reference to political genocide, since it appeared to imply a substantive change to the terms of article II of the Convention.

19. Mr. DECAUX said he thought that the reservations expressed concerning paragraph 4 missed the essential point that there was a need to broaden the previously excessively narrow definition of the crime in order to make the Convention more effective.

20. Mr. LINDGREN ALVES said he fully agreed with Mr. Decaux and suggested that consideration of the draft resolution should be suspended for the time being.

21. It was so decided.

Draft resolution on prevention of discrimination and protection of minorities (E/CN.4/Sub.2/1994/L.6)

22. Mr. CISSE (Centre for Human Rights) said that the financial implications of implementing paragraph 6 were estimated at US$ 20,000 per annum under section 21 (Human Rights) of the programme budget.

23. The draft resolution was adopted without a vote.

CONTEMPORARY FORMS OF SLAVERY (agenda item 16) (continued) (E/CN.4/Sub.2/1994/L.8 and L.13-L.15)

Draft decision on slavery during wartime (E/CN.4/Sub.2/1994/L.8)

24. Ms. CHAVEZ said that the words "in particular" in the last line of the first page and the sixth line of the second page should be deleted.

25. The draft decision as orally revised, was adopted without a vote.

Draft resolution on the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1994/L.13)

26. Mr. MAXIM said that a number of minor amendments proposed by Mr. Lingdren Alves had been accepted by the Working Group. They were: in the second preambular paragraph, the addition of "the alleged practice of" before "the removal of organs ..."; in paragraph 4, the replacement of "organ transplantation" by "the alleged transplantation of organs"; in paragraph 7, the addition after "children" of "and requests international cooperation to developing countries for establishing and implementing such programmes;" in paragraph 8, the addition after "non-governmental organizations" of the phrase "including scientific and medical associations"; in paragraph 9, the deletion of "in-depth" in the first line and of "in particular" in the second line, and the addition, after the word "drafting" in the third line, of the phrase "with the cooperation of the World Health Organization"; in paragraph 18, replacement of the word "restrict" by the word "prohibit", and the addition, after the words "specific projects" in the second line, of the phrase "with the cooperation and financial contribution of the tourist industry"; the addition of a new paragraph 19 to read: "Recommends that Governments adopt legislation to punish their citizens who make use of sex tourism, particularly when it involves child prostitution and child pornography.", with consequent renumbering; in the existing paragraph 20, the addition, after the word "States", of the words "non-governmental organizations, tourist industry syndicates, religious responsibles and grass-roots organizations"; and, in the existing paragraph 25, the deletion of the phrase "inside the family".

27. Ms. WARZAZI said she objected to the word "particularly" in the proposed new paragraph 19, since States could reasonably punish citizens who travelled abroad for sex tourism only when it involved the corruption of children.

28. Mr. LINDGREN ALVES said he agreed with Ms. Warzazi. The word "particularly" could be deleted.

29. Ms. FERRIOL ECHEVARRIA said she had some reservations about the addition to paragraph 7 because it implied that the developing countries bore the brunt of responsibility for the abuses, when they were in fact the victims and it was the industrialized countries which should be taking the initiative.

30. Mrs. PALLEY said she fully accepted the changes proposed by Mr. Lindgren Alves, but thought that, in view of the legal difficulties inherent in any form of extra-territorial jurisdiction, the proposed new paragraph 19 needed further discussion.

31. On the more general subject of the difficulties faced by the Sub-Commission in having to consider resolutions drafted in haste, she fully agreed with the idea put forward by Mrs. Ksentini at a previous session that a drafting committee was needed. Such a drafting committee would have prevented the adoption of a resolution the previous year which might have led to the abolition of one of the Sub-Commission's Working Groups and for which she had - mistakenly - blamed a member of the Secretariat who had assisted in drafting the resolution.

32. Mr. LINDGREN ALVES said, in reply to the comments made by Ms. Ferriol Echevarria concerning paragraph 7, that the paragraph referred to the rehabilitation of all victims and hence the call for cooperation. However, in the light of the reservations expressed, he was prepared to remove the specific reference to "developing countries". As for the implications of the proposed new paragraph 19 for extraterritorial jurisdiction, he did not believe the problem arose, since sex tourism could also be confined to one country. However, he would agree to leave out the proposed new paragraph 19 if that were the wish of the other members of the Sub-Commission.

33. Mr. CISSE (Centre for Human Rights) said that the budget requirements relating to the implementation of paragraph 5 of the draft resolution were estimated at US$ 5,500 under section 21 (Human Rights) of the programme budget.

34. Mrs. KOUFA said that she wished to become a sponsor of the draft resolution.

35. The draft resolution, as orally revised, was adopted without a vote.

Draft resolution on the United Nations Trust Fund on Contemporary Forms of Slavery (E/CN.4/Sub.2/1994/L.14)

36. The draft resolution was adopted without a vote.

Draft resolution on machinery for monitoring the international conventions on slavery (E/CN.4/Sub.2/1994/L.15)

37. The draft resolution was adopted without a vote.

PROMOTION, PROTECTION AND RESTORATION OF HUMAN RIGHTS AT NATIONAL, REGIONAL AND INTERNATIONAL LEVELS:

(a) PREVENTION OF DISCRIMINATION AND PROTECTION OF CHILDREN: HUMAN RIGHTS AND YOUTH;

(b) HUMAN RIGHTS AND DISABILITY

(agenda item 17) (continued) (E/CN.4/Sub.2/1994/L.7, L.9 and L.12)

Draft resolution on children and the right to adequate housing (E/CN.4/Sub.2/1994/L.7)

38. Mrs. FORERO UCROS suggested that, in paragraph 4, the words "and all the country rapporteurs of both the Sub-Commission on Prevention of Discrimination and Protection of Minorities and the Commission on Human Rights" should be deleted and that, in paragraph 1, the Spanish text should be brought into line with the original English.

39. It was so agreed.

40. Mrs. KOUFA said that she wished to be added to the list of sponsors.

41. The draft resolution, as amended, was adopted without a vote.

Draft resolution on the situation of children deprived of their liberty (E/CN.4/Sub.2/1994/L.9)

42. The draft resolution was adopted without a vote.

Draft resolution on human rights and disability (E/CN.4/Sub.2/1994/L.12)

43. The CHAIRMAN said that Mr. Fan, Mrs. Palley, Mr. Boutkevitch, Mr. Yimer and Ms. Warzazi should be added to the list of sponsors.

44. Ms. WARZAZI requested that the last preambular paragraph be deleted.

45. It was so decided.

46. Ms. FERRIOL ECHEVARRIA said, with reference to paragraph 3, that she fully agreed that the Sub-Commission should continue to discuss the subject but wondered why it was to be considered under agenda item 4 instead of agenda item 17.

47. Mr. EL-HAJJE said that there would be no problem in discussing the subject under item 17.

48. Mr. DECAUX said that the wording of the fourth preambular paragraph, at least in French, was ambiguous. The simplest solution would be to delete it.

49. Mrs. PALLEY said that the paragraph was correctly worded in English. The Standard Rules certainly did not contain legal clauses that obligated States, although there might be separate obligations under other instruments.

50. With regard to paragraph 3, she was not opposed to the subject being discussed under agenda item 17. The proposal that the question should be discussed under agenda item 4 was intended to avoid giving the impression that the Sub-Commission was duplicating the work of the new Special Rapporteur and of the Commission for Social Development.

51. Mr. GUISSE said that the wording of the fourth preambular paragraph seemed to be a way of informing States that they were not obliged to comply with the draft resolution. Naturally, that weakened the text.

52. Ms. WARZAZI suggested that, instead of deleting the fourth preambular paragraph, the word "Recognizing" should be replaced by the word "Regretting".

53. Mrs. PALLEY said that the Sub-Commission should recognize the factual situation, not regret it. The text as it stood merely contained a statement of fact. The reason why the Sub-Commission should continue to examine the question was precisely because no legal machinery had been set up under the Standard Rules. The paragraph should therefore not be deleted.

54. The CHAIRMAN said that Mrs. Palley's explanation made the situation quite clear.

55. Mr. DECAUX proposed that the words "in themselves" should be added after the words "Standard Rules" to make the paragraph more specific.

56. It was so decided.

57. The draft resolution, as amended, was adopted without a vote.

THE ADMINISTRATION OF JUSTICE AND THE HUMAN RIGHTS OF DETAINEES:

(a) QUESTION OF HUMAN RIGHTS OF PERSONS SUBJECTED TO ANY FORM OF DETENTION OR IMPRISONMENT;

(b) QUESTION OF HUMAN RIGHTS AND STATES OF EMERGENCY;

(c) INDIVIDUALIZATION OF PROSECUTION AND PENALTIES, AND REPERCUSSIONS OF VIOLATIONS OF HUMAN RIGHTS ON FAMILIES;

(d) THE RIGHT TO A FAIR TRIAL;

(e) INDEPENDENCE AND IMPARTIALITY OF THE JUDICIARY, JURORS AND ASSESSORS AND THE INDEPENDENCE OF LAWYERS

(agenda item 10) (continued) (E/CN.4/Sub.2/1994/22-24, 25 and Add.1, 26, 42 and 44; E/CN.4/Sub.2/1994/NGO/6, 8, 10 and 28; E/CN.4/Sub.2/1993/25)

58. Mr. KHAN, having congratulated Mr. Chernichenko and Mr. Treat on their excellent final report on the right to a fair trial (E/CN.4/Sub.2/1994/24),

which was the cornerstone of any country's judicial system and of the whole edifice of democracy, said he wished, however, to make some comments on the non-derogable right to a fair trial which was to be included in a third optional protocol to the International Covenant on Civil and Political Rights. Such a right could, in fact, be established by providing a non-derogable remedy. For example, article 226 of the Constitution of India confirmed the prerogative writs of British law, and article 32 also established the right to a remedy as a fundamental right. Thus the need for an optional protocol could be obviated if the remedy was provided in such a manner as to guarantee the right to a fair trial.

59. Moreover, with reference to article 4 of the International Covenant on Civil and Political Rights, it had been made very clear by previous speakers that the right to a fair trial might be suspended in certain circumstances during an emergency, when the very existence of a State was threatened. That was perfectly understandable, and mention had been made of the various safeguards emanating from article 4 of the Covenant in the report.

60. One very satisfying feature of the draft third optional protocol was that it did not provide for the right of signatory States to enter reservations. In the absence of such an arrangement, the optional clauses included in the draft protocol would probably not meet the standards required to guarantee the right to a fair trial. He hoped that the absence of any right to make reservations also meant that no time-limit would be imposed.

61. The law of contempt of court must be amended to allow for fair comment on judicial proceedings. Many countries, including India, had taken the view that fair comment on judicial proceedings, judgements handed down, the conduct of judges in court or any other matter concerning the judicial aspects or the facts in a case, should not constitute contempt of court. Otherwise, much criticism which would otherwise have emerged when an unfair trial took place or the proceedings did not conform to legal requirements would not be made, because of the author's fear of being held in contempt of court. The Special Rapporteurs might wish to take that point into account. Moreover, academic discussion of judgements and trials should also not constitute contempt of court.

62. Habeas corpus, as it had emerged in the law of England, had been adopted by most Commonwealth countries, including India, and there was a guarantee that the rights afforded by other writs like mandamus were available to anyone. The right of habeas corpus and other similar writs should therefore be made expressly non-derogable. The need to ensure that legislation was conducive to a fair trial should also be noted in the report.

63. Mr. GILANI (World Society of Victimology) said that everyone present had no doubt given serious consideration to the question as to whether national legal systems were in keeping with the provisions of the Standard Minimum Rules for the Treatment of Prisoners, the Code of Conduct for Law Enforcement Officials, the Body of Principles for the Protection of All Persons under Any form of Detention or Imprisonment and the relevant article of the Universal Declaration of Human Rights. In that case, they must have felt uncomfortable when reading the report of the Commission's Special Rapporteur on extrajudicial, summary or arbitrary executions (E/CN.4/1994/7), who had in

paragraph 327, pointed to a large number of killings in a certain State by security forces and police, often said to be the result of torture and ill-treatment in custody, and who had mentioned that, since mid-1992 the number of such deaths had risen sharply.

64. The State in question had failed to respect its own legal mechanisms and the deaths recorded in the report were a cause of concern to the United Nations and its human rights bodies. The Sub-Commission had a duty to consider such zero standards. If States were allowed to remain impervious to international standards, the difference between an individual and a State killing would disappear. The Sub-Commission should therefore take a lead in setting a positive agenda for the administration of justice and the human rights of detainees.

65. Representatives of NGOs travelled halfway around the world and braved financial and other constraints to appear before the Sub-Commission in order to present objective situations in the hope that the Sub-Commission would take them seriously. Since the assumption that everyone was entitled to a fair and public hearing by an independent and impartial tribunal in the determination of his rights and obligations and of any criminal charge against him presupposed that the organization of justice in a democratic society must not depend on the discretion of the executive but must be regulated by laws emanating from Parliament, the courts served as independent mediators between a State which abused its powers and an individual protesting his innocence.

66. In the case of Kashmir, the extension of presidential rule from Delhi had left the State judiciary unable to carry out that duty. The removal of detainees from their home districts to remote areas where they were inaccessible to their next-of-kin constituted a serious impediment to a fair trial. The Sub-Commission had received reports from its Special Rapporteur and from leading international and regional NGOs containing lists of detainees in Kashmir. He therefore urged the Sub-Commission to request the observer for India to indicate whether, under section 30 of that country's Human Rights Act, human rights courts had been set up in Kashmir, how many abuses thus far documented by international bodies had been accepted as prima facie evidence in order to institute criminal proceedings against the culprits, and what arrangements there were for compensation and rehabilitation. The observer for India could also be requested to assure the Sub-Commission that interested NGOs or Sub-Commission experts would be allowed to take part, as observers, in the proceedings of the human rights courts in Kashmir and Punjab.

67. Ms. Chavez took the chair.

68. Mr. FAI (International Islamic Federation of Student Organizations) said that, while the United Nations and other international forums had witnessed intense discussions and negotiations on the fate of soldiers and on disappearances of individuals in various places in the world, the enforced disappearance of hundreds of Kashmiris had received little, if any, attention. The Commission on Human Rights had, at its forty-ninth session, adopted resolution 1993/35 requesting all Governments to take legislative or other steps to prevent and punish the practice of enforced disappearances, but appeals of that kind had failed to deflect the Government of India from its campaign of bludgeoning the Kashmiris into submission.

69. The United Nations acknowledged that Kashmir did not belong to India and was a disputed territory. Abductions resulting in disappearances were practised on a large scale by the Indian occupation force in Kashmir. Many detainees were simply taken out and shot dead. In December 1993, an Amnesty International report indicated that sufficient evidence existed to show that persons who had "disappeared" had been arrested by the Indian occupation forces, which later denied that they had done so and expressed ignorance of the missing persons' whereabouts.

70. While international human rights law prohibited the deprivation of life under any circumstances, "custodial deaths" were common in Kashmir. By one count, there had been over 5,000 such deaths since the start of the current movement in December 1989.

71. He thanked Mrs. Palley for her suggestion that the Chairman of the Sub-Commission should use her moral authority to bring the Governments of India and Pakistan and the people of Kashmir to the negotiating table, with a view to finding a final solution to the Kashmir issue. In any case, the Sub-Commission should continue to monitor the human rights situation there and promote dialogue among the parties to the dispute.

72. Mrs. VIGNARD (France Libertés: Fondation Danielle Mitterand) said that, in Indonesia and Tibet, there had been several cases of "re-sentencing" in which opponents of the regime, already sentenced to terms of imprisonment for a variety of alleged crimes against the Government, had had their sentences increased at a later date.

73. In Indonesia such had been the fate of Nuki Sulaiman whose original sentence of four years' imprisonment had been increased three months later by additional five years' imprisonment. The same fate had befallen 21 young human rights activists whose original 6-month sentences had been increased 3 weeks later by between 8 and 18 additional months. In Tibet, 14 nuns had been re-sentenced and their terms of imprisonment increased by amounts ranging between 5 and 8 years, in addition to original sentences of between 5 and 17 years.

74. Her organization was greatly concerned at the fate of six Saharan civilians who had been held in arbitrary detention for more than a year before being sentenced to 20 years' imprisonment for having demanded the withdrawal of Moroccan troops and the acceleration of the United Nations referendum process. They had been denied an independent lawyer.

75. During the Asian-Pacific Conference on East Timor from, 31 May to 3 June 1994, the request by Mrs. Danielle Mitterand, President of her organization, to visit the resistance leader Xanana Gusmao in prison, had been denied. Mr. Gusmao's had been tried by an incompetent court in a trial that was full of illegalities. Her organization urged the Sub-Commission to continue to monitor the situation in East Timor and to ask that Mr. Gusmao be released so that he could participate freely in the peace negotiations on the territory's future.

76. Mrs. Attah resumed the Chair.

77. In reply to a procedural point raised by Mr. CHERNICHENKO, the CHAIRMAN asked the non-governmental organizations to confine their statements to the agenda item under consideration.

78. Mr. ELLMAN (International Federation of Human Rights) suggested that the Sub-Commission consider adopting the draft body of principles which was proposed in the final report of the Special Rapporteurs on the right to a fair trial (E/CN.4/Sub.2/1994/24, annex 2) after a review by an expert seminar. Such a body of principles should include the rights to habeas corpus, amparo and similar procedures.

79. His organization and its Northern Ireland affiliate, the Committee on the Administration of Justice, urged the United Kingdom Government to take swift action regarding a number of long-standing concerns about the administration of justice in Northern Ireland, including the lack of effective safeguards to prevent the ill-treatment of detainees arrested under emergency legislation, restrictions on access to legal advice, derogatory comments and threats against lawyers by some police officers and the evidence of official collusion in the death of the defence lawyer, Patrick Finucane. The United Kingdom Government had tried to distract attention from its own violations by highlighting the activities of illegal paramilitary groups.

80. He urged the United Kingdom Government to introduce electronic recording of interviews with people arrested under emergency legislation and to establish an independent inquiry into the killing of Patrick Finucane and the ongoing reports of threats against lawyers and to allow detainees immediate access to legal advice and to have their lawyers present during interrogation under emergency law.

81. Mr. VO VAN AI (International Federation of Human Rights) said that his organization continued to be concerned at cases of arbitrary arrest and detention in the Socialist Republic of Viet Nam, particularly of members of the traditional Unified Buddhist Church of Viet Nam. During the iniquitous trials of Thich Tri Tuu, Thich Hai Tang, Thich Hai Thinh and Thich Hai Chanh at Hue, and also of Thinh Hanh Duc at Ba Ria-Vung Tau, French defence lawyers retained by his organization had been refused visas. The monks had been refused the right to appeal. The repression of the Unified Buddhist Church of Viet Nam had been such that, on 28 May 1994, Thich Hue Thau of the Ngoc Phat Pagoda in the province of Vinh Long had burnt himself alive.

82. The Government of the Socialist Republic of Viet Nam continued to pursue a policy of procrastination and refusal with regard to attempted fact-finding missions by international governmental and non-governmental organizations on the grounds that such missions represented interference in the country's internal affairs. His organization asked the Sub-Commission to draw its own conclusions.

83. A fact-finding mission by his organization to Lebanon in March 1994 had observed a worsening of the human rights situation there as a consequence of 16 years of war. Permission had recently been refused for a medical mission to visit the country to examine the health of prisoners of opinion who had alleged torture. His organization also wished to draw attention to the intolerable plight of the Palestinians in Lebanon and of the 450,000 displaced

Lebanese people. Public and individual freedoms in Lebanon were seriously undermined by pressure upon and corruption of the judiciary and threats to the freedom of expression of the media.

84. His organization welcomed the recent abandonment of the cases against the women who had signed an appeal for democracy and freedom in Tunisia and the release of Mr. Moncef Marzouki, former President of the Tunisian League of Human Rights. It was, however, concerned at continuing reports of human rights abuses, including secret detention and ill-treatment, and threats to freedom of opinion and expression in that country.

85. Mr. ALBALA (International League for the Rights and Liberation of Peoples) said he wished to draw attention to the numerous cases of torture perpetrated by Turkey against hundreds of Kurds, including dozens of children, as well as to kidnappings and forced disappearances from villages and 73 disappearances of persons held in preventive detention between May and July 1994. The writer Ismail Besikci had been convicted and six Kurdish deputies had been put on trial for having defended the ideas for which they had been elected.

86. His organization hoped that Turkey would put an end to the martyrdom of the Kurdish people and comply with its obligations regarding the treatment of detainees and the right to a fair trial. The Sub-Commission should urge the Commission on Human Rights to take up the issue at its next session.

87. Mr. ARTUCIO (International Commission of Jurists) said that his organization supported Mr. Joinet's proposal that a draft convention be prepared on forced disappearances. It also strongly supported the proposal of the Working Group on administration of justice and the question of compensation that Mr. Joinet be given a mandate to prepare an initial document for that purpose. His organization was prepared to cooperate fully in the preparation of such a document.

88. In paragraph 137 of his excellent report (E/CN.4/Sub.2/1993/8), the Special Rapporteur on the right to restitution, compensation and rehabilitation for victims of human rights violations submitted some proposed basic principles and guidelines concerning reparation to victims of gross violations of human rights. In so doing, the Special Rapporteur had drawn on the findings of a Seminar on the subject, held at Maastricht, Netherlands, in 1992, in which his organization had participated. It hoped that work would continue on those draft basic principles. It was prepared to cooperate fully in that task which it considered to be both important and urgent.

89. Ms. DAURE-SERFATY (Movement Against Racism and for Friendship Among Peoples) said that, in Algeria, the situation of human rights continued to deteriorate. Arbitrary executions by the security forces had escalated and it was not possible to estimate the number of detainees nor the conditions of their detention.

90. It was true that, in Tunisia, Mr. Marzouki, President of the Tunisian League for Human Rights had been released as a result of international pressure; many other persons, however, remained in prison in extremely poor

conditions. Gross violations of the right to freedom of expression included the prohibition of foreign journalists from working in Tunisia and the suppression of a number of newspapers.

91. In Libya, no information had been provided regarding the fate of Mr. Mansour Kikhia, the former Minister for Foreign Affairs and founder of the Arab Organization for Human Rights who had been kidnapped in Cairo in December 1993.

92. In Mauritania, nothing had been done to aid the victims of the tragic events of recent years or to compensate them. The fate of 60,000 Mauritanian refugees in the charge of the United Nations High Commissioner for Refugees had not been decided, nor had the thorny question of the restitution of their belongings in their own country.

93. In Morocco, there had been substantial further progress on the issues of secret detention and exile for political reasons, in addition to the progress already made in 1991. There were three points she wished to make. First on 21 July 1994, 424 political detainees had been liberated under an amnesty; all had been victims of torture or ill-treatment, had been sentenced following unfair trials and had passed several years in detention. Nevertheless, about 30 political prisoners still remained in prison. Efforts must be continued to defend them and seek their freedom.

94. Secondly, political exiles had also been amnestied and, it would seem, without any restriction. All the political exiles should, however, be fully exonerated and their civil and political rights restored. A number of the political exiles would probably like to be in a position where they could visit their country freely but continue to live in the country where they had been forced to spend so many years. The Governments of the countries of asylum should give favourable consideration to such cases.

95. Thirdly, on 15 June 1994, the Minister of Human Rights, Mr. Omar Azziman, had referred openly in Parliament to a hitherto secret file containing the names of persons whose fate remained unknown. That file contained hundreds of names, including many from the Western Sahara. On 16 July 1994, the Minister had brought forward the date for closing the file. It was important to ensure that the fate of all those in that file should be ascertained, that compensation should be provided for the victims and their families and that those responsible for the inhuman and degrading treatment should be brought to justice.

96. The sad history of human rights in Morocco could not be effaced overnight. It must however be recognized that an important step had been taken which many people had not thought possible. Her organization was very happy at the progress that had been made in Morocco.

97. Mr. RETUREAU (World Federation of Trade Unions) said that the privatization of prisons in many countries was a matter of great concern to his organization. Subcontracting penitentiary functions to private interests motivated solely by considerations of profit ran the risk of exploitation of

the work of prisoners and of unfair competition to free workers. Prisoners obliged to work against their will were clearly being subjected to forced labour in the sense of ILO Conventions 29 and 105.

98. The proposed study on prison privatization should examine the issues of whether the rights of prisoners not to be subjected to forced labour were being infringed, particularly in the United Kingdom and the United States, where prison privatization had become the role model for others. Other issues concerned the rights of such prisoners to social protection, appropriate wages and vocational training, which would facilitate their rehabilitation into society at the end of their sentences. In countries such as Austria and Germany, the wages of prisoners were only 5 per cent of the minimum wage, and such prisoners also lacked any social security benefits.

99. The work of prisoners could be an instrument of rehabilitation only if it provided them with appropriate training and social welfare benefits; otherwise, on leaving prison, the prisoners would not have sufficient financial resources to find lodgings and look for work and would be liable to fall back into delinquency.

100. He also wished to draw attention to the case of Mark Curtis, a political and trade-union activist who had been condemned to 25 years' imprisonment at an unjust trail in Des Moines, Iowa, for having organized resistance to the brutal exploitation of workers in the meat-packing industry by transnational corporations. Curtis was, in fact, like Leonard Peltier, a political prisoner and had been the victim of a police set-up.

101. He had succeeded in obtaining the conviction of the members of the police who had beaten him up, but he nevertheless remained in prison. He was appealing his sentence before the federal courts but the Parole Board had refused, on various trumped-up grounds, to permit him conditional release. The Sub-Commission should demand justice for Mark Curtis.

102. His organization also urged the immediate release of Mr. Muchtar Pakpahan, President of SBSI, the independent trade union of Indonesia, registration of which had been refused by the military Government. Mr. Pakpahan had been held in solitary confinement and had not been permitted to communicate with his family or his organization. He had received a long arbitrary sentence because the Government wished to break the SBSI. The Sub-Commission should urge that he be released immediately and that trade-union and democratic freedoms be respected in Indonesia.

103. Mr. CHERNICHENKO said that, on behalf of Mr. Treat and himself, he wished to thank the members of the Sub-Commission and other speakers who had expressed such a high opinion of their report. If a decision was taken to publish the report all the comments they had made would be taken into account.

The meeting rose at 6.05 p.m.